

CRIMINAL REVISION

Before U Chit, J.

GULBAHAR (APPLICANT)

V.

THE UNION OF BURMA (RESPONDENT). *

C.C.
1965
Sept. 29.

Foreigner's Registration Act s. 5 (1)—applicant and ancestors in Burma for 3 generations—a citizen within the meaning of s. 4 (2) of the Union Citizenship Act.

Held : Ordinarily no application for revision will be considered if filed more than 60 days after the date of the last order passed unless it is accompanied by the explanation of the delay and the necessary affidavits. Although the Sessions Judge's record did not show that any order was passed in respect of the delay in filing the revision application, it appears that he exercised his discretion in condoning such delay in admitting it.

Held further : The applicant and her ancestors have been in Burma for 3 generations, and the applicant as well as her parents were born in Panmyaung (Panmyaung) which is in Minbya Township, Burma Proper. The applicant cannot, therefore, be deemed to be a foreigner and as such it is not necessary on her part to hold a Foreigner's Registration Certificate. In other words, she must be deemed to be a citizen within the meaning of s. 4 (2) of the Union Citizenship Act.

Mr. M. A. Subhan for the applicant.

U Kyaw Gaung (Government Advocate) for the respondent.

U CHIT, J.—The recommendation of the Sessions Judge, Hanthawaddy and Rangoon Town District, Rangoon, dated the 14th June 1965 to set aside the conviction and sentence passed against the applicant Gulbahar must be accepted.

Gulbahar was prosecuted under section 5(1) of the Foreigners' Registration Act in Criminal Regular Trial No. 335 of 1964 of the Court of the 11th Additional

* Criminal Revision No. 102 (b) of 1965. Review of the order of the 11th Additional Magistrate of Rangoon, dated 1st day of August 1964, passed in Criminal Regular Trial No. 335 of 1964, as recommended by the Sessions Judge, Hanthawaddy and Rangoon Town District, Rangoon in Criminal Revision No. 131 of 1964.

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Magistrate, Rangoon, because she did not have a Foreigners' Registration Certificate. During the course of the trial Gulbahar stated that both she and her parents were born in Panmraung village and that her grandparents also settled and died there. She therefore claimed to be a statutory citizen under section 4(2) of the Union Citizenship Act. The learned Magistrate accepted the fact that the applicant and her parents were born at Panmraung village and that she and her ancestors have been in Burma for three generations. However, the learned Magistrate held that Panmraung village was in Chittagong and therefore, the applicant must be deemed to be a foreigner and as she did not possess a Foreigners' Registration Certificate at the time material to this case, he convicted the applicant and sentenced her to pay a fine of K 30 or in default to undergo one month's rigorous imprisonment. Being dissatisfied with the said order, the applicant Gulbahar filed a revision application in the Court of Sessions, Hanthawaddy and Rangoon Town District, Rangoon, to set aside the conviction and sentence passed against her by the lower Court. At the time Gulbahar filed that revision application it was obviously time-barred by over four months. Therefore, she filed an application and the necessary affidavits explaining the delay in filing that application. Ordinarily no application for revision will be considered if filed more than 60 days after the date of the last order passed, unless it is accompanied by the explanation of the delay and the necessary affidavits. It is noticed from the Sessions Judge record that no order was passed in respect of the delay in filing the revision application. But it appears that when the Sessions Judge admitted the revision application he exercised his discretion in condoning such delay.

The learned Sessions Judge, after hearing the arguments advanced by Mr. Subhan and the Government Advocate,

came to the conclusion that Panmraung village, according to *Burma Gazetteer* submitted by Mr. Subhan, is in Akyab District. Therefore, petitioner cannot be deemed to be a foreigner, but she should be deemed to be a statutory citizen of the Union of Burma under section 4(2) of the Union Citizenship Act. He therefore recommended to the Chief Court to set aside the conviction and sentence.

When this case reached before me I had the opportunity of hearing the arguments advanced by Mr. Subhan, the learned Counsel for the petitioner and the learned Government Advocate. Mr. Subhan in the course of his address produced to the Court *Burma Gazetteer*, Akyab District, Volume B, No. 1, wherein at pages 52 and 74 Panmraung (Panmyaunggyi) is shown situated in Minbya Township, Akyab District. In order to make this assurance doubly sure I directed the Government Advocate to get a report and, if necessary, an authorized Government map of the Akyab District from the Immigration Department just to ascertain the correctness of the said relevant extracts from the *Burma Gazetteer*. After some time the Government Advocate produced to the Court a report from the Immigration Officer, Akyab to the Immigration Department, Rangoon and an authorized map of the Akyab District. The said report shows that Panmraung (Panmyaung) village is only six miles from Myohaung and it is in Minbya Township. The report goes on to say Myohaungmyo is known to the Indians as Pa-tri-kella meaning the city made of rocks. It is also envisaged from the authorized map that Panmyaung is in Minbya Township.

The only point for consideration before me is whether Panmraung (Panmyaung) is in India or in Burma. From the above facts and circumstances, it is clear that Panmyaung belongs to Burma proper and is in Minbya Township. Therefore, the applicant Gulbahar cannot be

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deemed to be a foreigner and as such it is not necessary on her part to hold a Foreigners' Registration Certificate. In other words, she must be deemed to be a citizen within the meaning of section 4(2) of the Union Citizenship Act. Thus, her conviction under section 5 (1) of the Foreigners' Registration Act was clearly wrong. Having accepted the recommendation of the learned Sessions Judge, I set aside the conviction and sentence passed against the applicant Gulbahar, and I direct that she be acquitted as far as this case is concerned. I further direct the fine of K 30 if paid be refunded to her.